

Docket ID: ETA – 2015 – 0002

Agency: Employment and Training Administration (ETA)

Parent Agency: Department of Labor (DOL)

Submitter: Elaine Young, Administrator, Workforce Development Division, Hawaii
State Department of Labor and Industrial Relations

Comments on WIOA Proposed Regulations (6-15-15)

1. Administration and Governance

Joint DOL and DOE NPRM, p. 20574, requires states to submit written comments on or before June 15, 2015. The proposed regulations were issued on April 16, 2015. This 60-day review period is too short for the review of thousands of pages of proposed regulations. We request an extension of the response time.

2. Eligible Training Providers

DOL NPRM, section 680.440, p. 20721, states that “the Governor may establish a transition period and states that providers that were eligible on July 21, 2014 will remain eligible under WIOA until December 31, 2015 or such earlier date as the Governor may set.” This transitional period is too short for such ETPs to prepare for and comply with a new set of requirements to continue to be eligible. Therefore, this period should be extended to prevent disruption of program of services. In addition, providers who become eligible between July 22, 2014 and June 30, 2015 should be grandfathered, or states should have the discretion to allow them to remain eligible providers until December 31, 2015.

DOL NPRM sections 680.450 and 680.460, beginning on p. 20857, provide for the initial eligibility procedures for new providers and how these providers can apply for continued eligibility. These procedures, including the application process for continued eligibility, are lengthy, and there will not be enough time for implementation. We urge that these procedures be made more flexible for easier implementation. We strongly suggest that provisions for waivers be included in the final rules.

DOL NPRM section 680.490, p. 20859, describes the performance measures and cost information that ETPs must collect. These requirements are unnecessarily burdensome, and they will negatively impact the variety and number of ETPs who may qualify to participate in the system. We request that waiver provisions be added in the final rules to allow ETPs to conform to performance standards without undue burden.

3. Funding Flexibility

WIOA section 128 provides that “The Governor shall reserve not more than 15 percent of each of the amounts allotted to the State ... for a fiscal year for statewide workforce investment activities.” The current year’s appropriation (FY 2015) is 10%. We would like the final rule to ensure that the Governor’s reserve will be the full 15% in order to carry out the required statewide activities and transition activities.

4. One Stop System

Competitive process in selection of one-stop operator. Joint DOL and DOE NPRM, p. 20602, provides that the only way to select a one-stop operator is through a competitive process. We are concerned that the procurement process will be costly and time-consuming and it may delay prompt program operations, especially in small states where one entity serves in several capacities.

Discussions on potential conflict of interest. Joint DOL and DOE NPRM, p. 20603, allows local boards and states to compete to serve as a one-stop operator, provided that internal control policies are established to prevent conflict of interest pursuant to proposed regulations section 679.430 (p. 20846).

- Joint DOL and DOE NPRM, p. 20605, provides that a one-stop operator can also be a service provider, provided there are firewalls in place to ensure that the operator is not conducting oversight of itself as service provider. In small states where the one-stop operator and the service provider is the same entity, it will not be cost efficient to implement firewalls within the same entity with limited staff.
- DOL NPRM section 679.430 (p. 20846) entitled “How do entities performing multiple functions in a local area demonstrate internal controls and prevent conflict of interest?” states that an organization which performs multiple functions “must develop a written agreement with the local board and chief local elected official to clarify how the organization will carry out its responsibilities” In small states where entities perform multiple

functions, a written agreement describing separation of duties should be sufficient to prevent conflict of interest.

- Other related questions that require clarification include: If a local board is also the service provider, the board should also have firewall policies in place to prevent conflict of interest, especially for small local areas with limited staff. If the local board is overseeing the service provider, does it mean there is no need for the one-stop operator to oversee the service provider?

Infrastructure Funding.

Joint DOL and DOE NPRM, p. 20605-20608, addresses infrastructure funding. These provisions discuss the role of the Governor and the two methods of funding: a local and a state one-stop infrastructure funding mechanism, and the relationship between the two methods. The infrastructure funding provisions need clarity for better understanding, and we would also like technical assistance in this area.

Unemployment Compensation Claims.

Joint DOL and DOE NPRM, p. 20601, provides that “In the context of providing assistance with UC claims, the proposed rule defines “meaningful assistance” as having staff well-trained in UC claims filing and the rights and responsibility of claimants” It also provides that “This staff can be UI staff placed in the one-stop or Wagner-Peyser or other one-stop staff who have been properly cross-trained to provide this service. Alternatively, meaningful assistance can also be provided by phone or by means of other technology,...” It is our experience that only unemployment compensation staff is qualified to give technical advice and help claimants file unemployment claims. Therefore, only unemployment compensation staff, not other one-stop staff, should provide assistance in filing unemployment claims.

Waivers. Waiver provisions should be added in the final rules relating to the application for continued eligibility of ETPs, and to the internal control policy requirement provided that a written agreement pursuant to proposed regulations section 679.430 is in place.

5. Co-location

DOL NPRM, section 678.310, 678.315, p. 20638- 20639. The proposed regulations require other partners be present more than 50% of the time in a one-stop center. Since there are ES offices that exist outside of the one-stop center, this co-location

requirement will be a big problem, especially when long-term lease arrangements have to be adjusted. We request that the co-location requirement be clarified and made less burdensome for the entities participating in the one-stop center.

6. Performance reporting requirements

Joint DOL and DOE NPRM, section 677.160, p. 20588. One of the requirements is “the amount of funds spent on each type of career and training service for the most recent program year “ The term “career and training service” is used repeatedly, but it is not defined. (On p. 20601, the term “career services” is described in reference to WIOA, but not “career and training service”) We request that a definition be added in the final rules or clarification be added.

7. Negotiation of performance targets

Joint DOL and DOE NPRM, section 677.210, p. 20594. The proposed regulations describe the process to be utilized to establish local performance targets prior to the start of a program year. But it is silent on which core programs are subject to negotiation of local performance targets. Clarification is needed.

8. What is the purpose of the local plan

DOL NPRM section 679.500, p. 20846. It states that the local plan is to set forth strategies, among others, “to direct investments in economic, education, and workforce training programs ... to ensure that individuals...have the skills to compete in the job market and that employers have a ready supply of skilled workers;...” Local boards do not have the expertise and authority to spearhead economic developments, which are usually the responsibility of officials with specialized experience. We request clarification on this point.

9. Performance and Data

See following pages.

Comments on WIOA Performance and Data

Preamble	Regulations or Law	Comments
<p>Page 20584 Proposed § 677.150(b) defines “reportable individual” as an individual who meets specific core program criteria for reporting such as the provision of identifying information or a level of service receipt that is below the staff-assisted level.</p>	<p>Page 20632 § 361.150 What definitions apply to Workforce Innovation and Opportunity Act performance measurement and reporting requirements? (b) Reportable individual. An individual who has taken action that demonstrates an intent to use program services and who meets specific reporting criteria of the core program, including: (1) Individuals who provide identifying information; (2) Individuals who only use the self-service system; and (3) Individuals who only receive information on services or activities.</p>	<p>Hawaii agrees with this definition to record individuals as reportable individuals rather than including these individuals as participants.</p>
<p>Page 20585 Proposed § 677.150(c) defines the term “exit” for the purposes of a uniform performance accountability system for the core programs under WIOA, as well as applicable non-core programs as established through regulation or guidance. The last date of service means the individual has not received any services for 90 days and there are no future services planned. For the purpose of this definition, “service” does not include self-service, information-only activities, or follow-up services.</p>	<p>Page 20632 (c) Exit. As defined for the purpose of performance calculations, exit is the point after which an individual who has received services through any program meets the following criteria: (1) For the adult, dislocated worker, and youth programs under Workforce Innovation and Opportunity Act (WIOA) title I, the AEFLA program under WIOA title II, and the Employment Services authorized by the Wagner-Peyser Act as amended by WIOA title III, exit date is the last date of service: (i) The exit date cannot be determined</p>	<p>Hawaii agrees with the definition of exit for all core programs. Hawaii also agrees with excluding self-service, information-only activities or follow-up services when determining the date of exit. We have had many participants who just go into our system to look at what jobs are available and this keeps extending their exit date. They aren’t in need of services but are just curious. We feel that once the staff has determined in consultation with participant that they are done with services, they should be exited. We will encourage these ‘exited’ participants to use our job matching system and if they are once</p>

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	<p><i>until 90 days of no services has elapsed. At that point the exit date is applied retroactively to the last date of service.</i></p> <p><i>(A) Ninety days of no service does not include self-service or information-only activities or follow-up services and</i></p> <p><i>(B) There are no future services planned, excluding follow-up services.</i></p>	<p>again in need of services, to return to the One-Stop Centers.</p>
<p>Page 20585</p> <p><i>WIOA sec. 116(d)(2)(I) requires States to report on the number of participants who are enrolled in more than one WIOA core program. Therefore, the Departments are also considering the value of a cross-program definition of exit, sometimes called a common exit, that is based upon the last staff-assisted service from all core programs rather than a program exit.</i></p>		<p>Hawaii feels that it will be costly to integrate data systems so programs should be allowed to operate differently in serving their customers. Will there be funds available to Sates to start working with other agencies to have a centralized system?</p>
<p>Page 20585</p> <p><i>Proposed § 677.155(a)(1) identifies the six primary indicators that will be applied to the core programs identified in sec. 116(b)(3)(A)(ii) of WIOA. The DOL is also planning to leverage these indicators to streamline reporting for other DOL programs, such as the JVSG program, and other discretionary grant programs. To that end, the Departments invite comments specific to this issue.</i></p>	<p>None.</p>	<p>Hawaii agrees on having the indicators apply to the JVSG program but disagrees on having the indicators apply to the other discretionary grants. These discretionary grants have a limited timeframe and the indicators would take too long to show any positive outcomes from having been enrolled in the specific discretionary grant.</p>
<p>Page 20586</p> <p><i>Proposed § 677.155(a)(1)(v) measures the percentage of participants who, during a PY, are in education or training programs that lead to a recognized post-</i></p>	<p>Page 20633</p> <p><i>(v) The percentage of participants who during a program year, are in an education or training program that leads to a recognized post-secondary credential or</i></p>	<p>Hawaii agrees with the first five documented progress methods but method 6 needs to be strengthened or left up the States to determine if they would like to use method #6. States could</p>

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<p><i>secondary credential or employment, and who are achieving measurable skill gains, which the Departments are defining as documented academic, technical, occupational or other forms of progress, toward the credential or employment.</i> <i>(1) to (5)</i> <i>(6) measurable observable performance based on industry standards.</i></p>	<p><i>employment and who are achieving measurable skill gains, defined as documented academic, technical, occupational or other forms of progress, towards such a credential or employment.</i></p>	<p>include #6 in their Unified plan with examples of what will be used. Hawaii feels that industries differ in each State and we would like to use what is applicable to the State's labor market.</p>
<p><i>Page 20587</i> <i>Proposed § 677.155(a)(1)(vi) implements the sixth statutory primary indicator related to effectiveness in serving employers.</i></p>	<p><i>Page 20633</i> <i>(vi) Effectiveness in serving employers, based on indicators developed as required by sec. 116(b)(2)(A)(iv) of WIOA.</i></p>	<p>Hawaii would like to use the FEIN method to determine the effectiveness in serving employers. This method would have the smallest burden on employers and would probably result in a better response rate. For states with small dollars, this method would be the most beneficial.</p>
<p><i>Page 20588</i> <i>Section 116(d)(1) of WIOA requires the Departments to provide a performance reporting template for each of the performance reports required in secs. 116(d)(2)-(4) of WIOA.</i></p>	<p><i>Page 20633</i> <i>§ 677.160 What information is required for State performance reports?</i> <i>(a) Section 116(d)(2) of WIOA requires States to submit a State performance report. The State performance report must be submitted annually using a template the Departments will disseminate and must provide, at a minimum, information performance levels achieved consistent with § 677.175 with respect to:</i></p>	<p>Hawaii would like to see the templates get issued as soon as possible so that we could start working on revising our management information system and to start tracking and reporting what is necessary for co-enrollments.</p>
<p><i>Page 20589</i> <i>Proposed § 677.160(a)(9) implements the WIOA statutory allowance for the collection of information that facilitates comparisons of programs with programs in other States.</i> <i>The Departments are also considering the addition of a supplemental customer</i></p>	<p><i>Page</i> <i>(iii) An evaluation of the design of the programs and performance strategies and, when available, the satisfaction of employers and participants who received services under such strategies.</i></p>	<p>Hawaii would like to have the supplemental customer service measure as an option. For smaller states it becomes costly to have staff do interviews.</p>

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<i>service measure, which would assess the quality of services provided to American Job Center customers.</i>		
<p><i>Page 20590</i> <i>Proposed § 677.180(a) provides that only the failure to submit the State annual performance reports required under sec. 116(d)(2) of WIOA is sanctionable.</i></p>	<p><i>Page 20634</i> § 677.180 <i>What State actions are subject to a financial sanction under Workforce Innovation and Opportunity Act sec. 116?. The following failures by a State are subject to financial sanction under WIOA sec. 116(d):</i> <i>(a) The failure by a State to submit the State annual performance report required under WIOA sec. 116(d)(2); or</i> <i>(b) The failure by a State to meet adjusted levels of performance for the primary indicators of performance in accordance with sec. 116(f) of WIOA.</i></p>	<p>Hawaii feels that sanction should not be applied if the instructions/templates are not issued on a timely basis and States do not have the opportunity to make the necessary changes in time. We would also like to have sanctions that are applied to an entity and not all core programs.</p>
<p><i>Page 20592</i> <i>Proposed § 677.190(d) establishes two thresholds for performance failure. The first threshold at proposed § 677.190(d)(1) is 90 percent for each of the overall State program scores and the overall State indicator scores.</i></p>	<p><i>Page 20635</i> § 677.190(d) <i>A performance failure occurs when:</i> <i>(1) Any overall State program score or overall State indicator score falls below 90 percent for the program year; or</i></p>	<p>Hawaii proposes that the threshold be changed to 70% since many of the performance indicators are new for the Title II and IV programs.</p>
<p><i>Page 20727</i> § 680.650 <i>The proposal states that veterans must receive priority of service in programs for which they are eligible. In programs that require income-based eligibility to receive services, amounts paid while on active duty or paid by the Department of Veterans Affairs (VA) for VR, disability, or other related VA programs are not</i></p>	<p><i>Page 20860</i> § 680.650 <i>Do veterans receive priority of service under the Workforce Innovation and Opportunity Act?</i> <i>Yes, veterans under WIOA sec. 3(63)(A) and 38 U.S.C. 101 receive priority of service in all Department of Labor-funded training programs under 38 U.S.C. 4215 and described in 20 CFR 1010. A veteran must still meet each program's eligibility</i></p>	<p>In WIA of 1998, family income calculations were outlined, and included/excluded income sources defined. However, neither the WIOA statute nor the NPRM address family income calculation method (annual income or annualized using previous six months) or the inclusions/exclusions beyond active-duty pay and certain VA benefits. In addition, definition for “family” is not defined as has been provided</p>

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<p><i>considered as income when determining low-income status.</i></p>	<p><i>criteria to receive services under the respective employment and training program. For income-based eligibility determinations, amounts paid while on active duty or paid by the Department of Veterans Affairs (VA) for vocational rehabilitation, disability payments, or related VA-funded programs are not to be considered as income in accordance with 38 U.S.C. 4213 and 20 CFR 683.230.</i></p>	<p>recently (WIOA Sec. 3).</p> <p>Will this be addressed in TEGL or TEN guidance? We are concerned that requirements will change over time and would like clear guidance in how to determine income eligibility and what is included and not included.</p>
<p>Page 20718 Proposed § 680.320(b) includes the term “individuals with barriers to employment” in place of the term “special participant,” as used under WIA. “Individuals with barriers to employment” is broader than “special participants.” “Individuals with barriers to employment” includes: Displaced homemakers (see § 680.630); low income individuals; Indians, Alaska Natives, and Native Hawaiians; individuals with disabilities; older individuals; ex-offenders; homeless individuals; youth who are in or have aged out of the foster care system; individuals who are English learners, have low literacy levels, or face substantial cultural barriers; eligible MSFWs; individuals within 2 years of exhausting lifetime eligibility under TANF; single parents (including pregnant women); long-term unemployed individuals; and members of other groups identified by the Governor.</p>	<p>Page 20855 § 680.320 Under what circumstances may mechanisms other than Individual Training Accounts be used to provide training services? (b)(9) Individuals who are English language learners, individuals who have low levels of literacy, and individuals facing substantial cultural barriers,</p> <p>Sec. 3(24) INDIVIDUAL WITH A BARRIER TO EMPLOYMENT.—The term “individual with a barrier to employment” means a member of 1 or more of the following populations: (I) Individuals who are English language learners, individuals who have low levels of literacy, and individuals facing substantial cultural barriers.</p>	<p>There is inconsistency in the definitions for Individuals with a barrier to employment - English language learners. As stated in the preamble of the NPRM it says ‘or’ but the Law and Regulations say ‘and’.</p> <p>Must an individual meet all 3 parts of the definition, or any one of the 3 parts to meet this barrier?</p>
<p>Page 20584 Proposed § 677.150(a) proposes a</p>		<p>Why does Adult have noprovision for ‘determined eligible’?</p>

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<p><i>definition of “participant” across the core programs because participants are specifically identified in the statute as included in performance calculations. For WIOA adults, reportable individuals who receive staff assisted services would be considered participants and, thus, be included in performance calculations. For WIOA dislocated workers, reportable individuals who are determined eligible and receive a staff assisted service would be considered participants and, thus, be included in performance calculations.</i></p>		
<p><i>Proposed § 677.160(a)(3)–(7) implements WIOA’s statutory requirement that States report information on career and training services including: (1) Participant and exiter counts by career and training services, (2) the performance levels achieved for the primary indicators consistent with § 677.155 for career and training services, (3) the percentage of participants who are placed into training-related employment, (4) the amount of funds spent on each type of career and training service, and (5) the average cost per participant for participants who received career and training services.</i></p>	<p><i>Page 20633 § 677.160 What information is required for State performance reports? (a)(6) The amount of funds spent on each type of career and training service for the most recent program year and the 3 preceding program years, as applicable to the program;</i></p>	<p>Funds spent directly on training services can be tracked easily through our case management and accounting systems. But tracking of funds used for individual Career Services cannot be easily tracked, as the Career Services typically do not have expenditures tracked by participant. To track Career services we would have to include the salary, benefits, rent, utilities, etc. to determine costs related to the time spent providing the service to each individual is burdensome. All of these things must be taken into consideration in order to determine the “cost” of a career service and will be burdensome unless DOLETA is going to provide a specific formula to be used by all states. Does ETA’s have a proposed definition or solution to track these costs to achieve common reporting? Is there an expectation that these costs reported for individuals would be related directly to the</p>

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		<p>ETA 9130 Financial Report? If so, what is the percentage of allowable variances? ETA should be able to calculate this based upon the ETA 9130 submission and using the to-be-defined 9090s for WIOA counts to calculate costs/participants. But if we are reporting registrants (self-Service individuals), how does that affect the calculations because self-service is an extension of the OneStop with no direct staff services costs and are considered indirect costs.</p>